



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Sergeant Michael Munson
Webster Police Department
217 Pennsylvania Avenue
Webster, Texas 77598

OR2010-10339

Dear Sgt. Munson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386466.

The Webster Police Department (the "department") received a request for information relating to a specified case. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;

or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). We find that the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (defining "abuse," for purposes of Fam. Code ch. 261, as including offense of sexual assault under Penal Code § 22.011). We therefore conclude that the submitted information is generally confidential under section 261.201(a)(2).

We note that the requestor may be a parent of the child who is listed as the victim of the alleged or suspected abuse. Moreover, the requestor is not alleged to have committed the abuse. Therefore, the submitted information may not be withheld from this requestor, if she is the child's parent, on the basis of section 261.201(a). *See id.* § 261.201(k). In this instance, however, the submitted information uses a pseudonym to identify the child. Thus, we are unable to determine whether the requestor is the child's parent. Accordingly, we will rule conditionally. Thus, if the requestor is not the child's parent, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. But if the requestor is the child's parent, the submitted information may not be withheld under section 552.101 on the basis of section 261.201(a). Section 261.201(l)(2) provides, however, that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Therefore, in the event that the requestor is the child's parent, we will address your claim under section 552.108 of the Government Code.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the submitted information is related to a concluded investigation that did not result in a conviction or a deferred adjudication. You explain that the defendant was no-billed by a Harris County grand jury. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the submitted information.

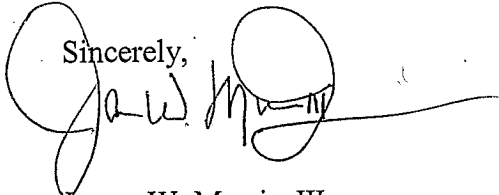
We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the identity of the complainant and a detailed description of the offense. Because the responsive information is related to an alleged sexual assault, the department would ordinarily be required to withhold the identity of the crime victim under section 552.101 in conjunction with common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the responsive information uses a pseudonym to identify the child who is listed as the victim. Therefore, the department must release basic offense and arrest information in accordance with section 552.108(c). *See* ORD 127 at 3-4. The department may withhold the rest of the requested information under section 552.108(a)(1).

In summary: (1) if the requestor is not a parent of the victim of the alleged child abuse, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; and (2) if the requestor is the child's parent, then the submitted information may be withheld under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/tp

Ref: ID# 386466

Enc: Submitted documents

c: Requestor
(w/o enclosures)